In the *first* class of cases, it is held that the proceeding abates by the death, resignation or other retirement of the officer: *The Secretary* v. *McGarrahan*, 9 Wall. (U. S.) 298, 19 L. ed. 579; *United States* v. *Boutwell*, 17 Wall. 604, 21 L. ed 721; *Warner Valley Stock Co.* v. *Smith*, 165 U. S. 28, 41 L. ed. 621, 17 Sup. Ct. Rep. 225; *United States* v. *Butterworth*, 169 U. S. 600, 42 L. ed. 873, 18 Sup. Ct. Rep. 441. See also *United States* v. *Chandler*, 122 U. S. 643, 30 L. ed. 1244; *United States* v. *Lamont*, 155 U. S. 303, 39 L. ed. 160, 15 Sup. Ct. Rep. 97; *United States* v. *Lochren*, 164 U. S. 701, 41 L. ed. 1181, 17 Sup. Ct, Rep. 1001. To remedy certain of the difficulties so arising Congress in 1899, passed an act (30 Stat. at L. 822, ch. 121) to prevent the abatement of such actions. In the *second* class of cases, the proceeding does not abate but "may be commenced with one set of officers, and terminate with another, the latter being bound by the judgment." *Thompson* v. *United States*, 103 U. S. 480, 26 L. ed. 521; *Leavenworth County* v. *Sellew*, 99 U. S. 624, 25 L. ed. 333. See also *People* v. *Champion*, 16 Johns. (N. Y.) 61; *People* v. *Collins*, 19 Wend. (N, Y.) 56; *Re Parker*, 131 U. S. 221, 33 L. ed. 123, 9 Sup. Ct. Rep. 708.

MASTER AND SERVANT—ACTS WITHIN THE SCOPE OF THE EMPLOYMENT.—Defendant employed a servant to drag bales of cotton from the sidewalk into his warehouse, and for this purpose provided him with a short iron hook. While coming out of the warehouse, the servant saw some boys playing on and around the bales, and made a motion as if to throw the hook at them, in order to frighten them away. The hook slipped from his hand and destroyed the eye of the plaintiff, a boy standing near by on the sidewalk, but who was not on the bales or making any attempt to trespass upon the defendant's property. In an action to recover damages from the master for this act of the servant, *Held*, that the defendant was not liable. *Guille* v. *Campbell*, (1901) 200 Pa. 119, 49 Atl. Rep. 938, 55 L. R. A. 111.

The question, of course, was whether the act of the servant was within the scope of his employment. It had neither been authorized nor contemplated by the master. Was it incident to or in furtherance of the duty the servant was authorized to perform? It did not appear that any of the boys were in any way obstructing the servant or interfering with the discharge of his duty. It was true that the injury had been done with an instrument provided by the master but it was provided for an entirely different purpose. "The act of violence by which the injury was occasioned was not done in execution of the authority given, but was quite beyond it, and must be regarded as the unauthorized act of the servant, for which he himself and not the defendant must be answerable. Whether his action was simply careless, or whether it was malicious, it was his own, and was not an incident to the authority granted."

MASTER AND SERVANT— CONTRACT TO EMPLOY—DUTY OF MASTER TO GIVE WORK AS WELL AS PAY WAGES.—Plaintiff and defendants entered into a written contract whereby the defendants agreed "to continue to engage and employ the plaintiff as their servant and representative salesman" for four years, and to pay him an annual salary in monthly instalments. The plaintiff agreed "to devote his whole time to the business" of the defendants, and "to faithfully serve them as heretofore," After serving them for some time, plaintiff was notified by the defendants that although he would still be in their employ, and paid as usual, he would not after that day "be required to perform any duties." He sued to recover damages for not giving him work, and for not permitting him to continue to represent them as their salesman. *Held*, that the action could not be maintained. *Turner* v. *Sawdon* [1901] 2 K. B, 653.

The opinion of the majority of the Court of Appeal was that the contract amounted simply to an undertaking on the part of defendants to keep or retain plaintiff as their employee, and to pay him the stipulated wages—both of which they had done—but did not involve any further undertaking that they would also give him work to do, or permit him to work. The

case was distinguished from *Turner* v. *Goldsmith* [1891] 1 Q. B. 544, on the ground that there the compensation was to be paid in the form of commissions, and that that impliedly created a contract to find employment for the servant. *Emmens* v. *Elderton*, 13 C. B. 495, 4 H. L. 6 24, was thought to be conclusive of the question.

Stirling, L. J., while not formally dissenting, said that he was still impressed with the conviction that plaintiff's contention was not without foundation. It is clear, he said, that the word "employ" is capable of two meanings—to simply retain in service, or to give actual work to be done by the person employed. In the case of a medical man employed for a fixed term, no one would say that work must be found for him." "On the other hand, in the case of an actor who accepts an engagement, it may be an important consideration with him to have an opportunity of displaying his abilities before the public, and it may be that there is an implied obligation on the part of the master to afford such an opportunity: *Fechter* v. *Montgomery* (1863) 33 Beav. 22." So in the case of a commission agent. In the case at bar there was evidence that opportunity to keep in touch with the trade was essential to plaintiff's success as a salesman, and in this there is some likeness to the case of the actor. On the whole, however, he was not prepared to differ from the conclusion at which the majority had arrived.

MUNICIPAL CORPORATIONS—POWER TO REGULATE PUBLIC SPEAKING ON THE STREETS.—The charter of the city of Detroit conferred power upon the council "to control, prescribe and regulate the manner in which the highways, streets, lanes, alleys and public grounds and spaces within said city shall be used and enjoyed." It also conferred power to prevent disorderly noise or disturbance or assemblage in the streets. The common council passed an ordinance forbidding any person from making any public address, etc., in any of the public streets, etc., within one half-mile of the city hall, without a permit from the mayor, designating the time and place. Such a permit could not be issued to the same person for more than one night in any week. Complaint was made before the Recorder's Court against a street preacher for gathering a crowd and preaching in a public street, in violation of this ordinance, but the judge refused to entertain it on the ground that the ordinance was void, as being an unreasonable and unauthorized interference with common right. Mandamus was therefore asked to compel him to entertain the prosecution. *Held*, that the ordinance was valid, and that it was the duty of the respondent to proceed with the trial of the case. *Love* v. *Phalen*, (1901), — Mich. —, 87 N. W. Rep. 785, 55 L. R. A. 618.

Such an ordinance is valid: *Commonwealth* v. *Davis*, (1895) 162 Mass. 510, 39 N. E. Rep. 113, 44 Am. St. Rep. 389, 26 L. R. A. 712; S. C. 167 U. S. 43, 17 Sup. Ct. Rep. 731. It does not violate the right of freedom of speech. It does not deprive any one of any legitimate use of the public streets. It does not involve any unlawful delegation of power to the mayor. *Frazee's Case*, 63 Mich, 396, 30 N. W. Rep, 72 6 Am. St. Rep. 310 is distinguishable. No such arbitrary and invidious discriminations are possible, as were found to be in *State* v. *Dering*, 84 Wis. 585, 54 N. W. Rep. 1104, 36 Am. St. Rep. 948.

NEGLIGENCE--IMPUTING NEGLIGENCE OF DRIVER OF A VEHICLE TO PASSENGERS.—A party of young people arranged for a picnic. The young men were to furnish the conveyance, and the young ladies were to supply the lunch,—each young lady furnishing lunch for herself and the young gentleman who escorted her, though all the viands were united to make a common lunch at the picnic. The young gentlemen delegated to one of their number, Mr. G., the hiring of the conveyance, and he hired a large omnibus, with four horses and a driver and assistant. Mr. G. sat with the driver, and with his consent drove the horses. The other members of the party sat inside the omnibus, and were not aware that G. was driving. While he was so driving, the omnibus was capsized by reason of the negligently defective condition